

85<sup>th</sup> Legislative Session – 2010

Committee: House State Affairs

Thursday, February 18, 2010

P - Present  
E - Excused  
A - Absent

Roll Call

P Boomgarden  
P Engels  
P Feinstein  
P Gosch  
P Hunhoff (Bernie)  
P Lucas  
P Lust  
P Rausch  
P Rave  
P Steele  
P Turbiville  
P Noem, Vice-Chair  
P Faehn, Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Chairman Faehn.

MOTION: TO APPROVE THE MINUTES OF FEBRUARY 17, 2010.

Moved by: Turbiville  
Second by: Rausch  
Action: Prevailed by voice vote.

HB 1135: rescind all previous applications of the State of South Dakota for the calling of a federal constitutional convention to amend the Constitution of the United States.

Proponents: Representative Betty Olson  
Rita Houglum, Eagle Forum

Chris Hupke, SD Family Policy Council

MOTION: DO PASS HB 1135

Moved by: Noem

Second by: Gosch

Action: Prevailed by roll call vote. (10-2-1-0)

Voting Yes: Boomgarden, Gosch, Lucas, Lust, Rausch, Rave, Steele, Turbiville, Noem, Faehn

Voting No: Feinstein, Hunhoff (Bernie)

Excused: Engels

HB 1192: establish an incentive grant program for the installation of ethanol blender pumps and to make an appropriation therefor.

Proponents: Representative Mitch Fargen  
Senator Dave Knudson  
Jeff Bloomberg, Bureau of Administration  
Orrin Swayze, Self, Wilmot (Handout 1)  
Owen Jones, Self, Britton (Handouts 2 and 3)  
Matt McCaulley, SD Corn Growers Association  
John Kerstiens, SD Farmers Union  
Harry Christianson, Ethanol Producers of SD  
Dawna Leitzke, SD Petroleum & Propane Marketers Association  
Brenda Forman, SD Association of Cooperatives

MOTION: AMEND HB 1192

1192td

On the printed bill, delete everything after the enacting clause and insert:

" Section 1. The ethanol blender pump incentive grant program is hereby established and shall be administered by the Department of Tourism and State Development. Under the program, the department shall award incentive grants to motor fuel retail dealers as defined in § 10-47B-3 for the purpose of entering into contracts for the purchase or installation of ethanol blender pumps and associated above-ground piping and storage systems and related equipment to be used at facilities operated by the retail dealers for the sale of motor fuel to the public. No grant under the program may exceed ten thousand dollars. However, a retail dealer may receive more than one grant under the

program. To be eligible for a grant, a retail dealer shall be located in South Dakota. Grants may be made under the program during the period beginning on April 1, 2010 and ending on May 28, 2010 if funds are available in the ethanol blender pump incentive grant fund established pursuant to section 3 of this Act. The department may use up to five percent of any amount appropriated to the ethanol blender pump incentive fund for administration, the dissemination of information related to the ethanol blender pump incentive program, and the dissemination of information related to the benefits of ethanol.

Section 2. For purposes of this Act, the term, ethanol blender pump, refers to a mechanism provided by the retail dealer for the dispensing at retail of ethanol blend as defined in § 10-47B-3 so that the end user may select the ratio of ethanol to gasoline to be dispensed. The pump shall be the type that:

- (1) Dispenses at retail a blend of gasoline and ethanol in the ratio selected by the purchaser;
- (2) Is manufactured to an industry standard and carries a warranty for compatibility with dispenser components and storage and piping systems;
- (3) Has at least four hoses and dispenses the following:
  - (a) Either a blend of ten percent ethanol or the minimum blend percentage approved for all vehicles by the United States Environmental Protection Agency;
  - (b) A blend of at least fifteen percent ethanol; and
  - (c) E85 fuel; and
- (4) Complies with all alternative fuel, biofuel, and flexible fuel requirements established by law.

Section 3. There is hereby created a special fund within the Department of Tourism and State Development known as the ethanol blender pump incentive grant fund. Money in the fund may only be used to provide incentive grants pursuant to this Act and as otherwise provided in section 1 of this Act. The fund consists of legislative appropriations, donations, interest on investments, and moneys from all legal public and private sources, including federal grants. All funds received in the ethanol blender pump incentive grant fund shall be set forth in an informational budget as described in § 4-7-7.2.

Section 4. There is hereby appropriated the sum of one million dollars (\$1,000,000), or so much thereof as may be necessary, in federal fund expenditure authority, to the Department of Tourism and State Development for the expenditure of funds received through the American Recovery and Reinvestment Act of 2009, P.L. 111-5 to implement the ethanol blender pump incentive grant program as provided in this Act.

Section 5. The secretary of tourism and state development shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 6. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and

effect from and after its passage and approval."

Moved by: Rave  
Second by: Noem  
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1192 AS AMENDED

Moved by: Rave  
Second by: Noem  
Action: Prevailed by roll call vote. (13-0-0-0)

Voting Yes: Boomgarden, Engels, Feinstein, Gosch, Hunhoff (Bernie), Lucas, Lust, Rausch,  
Rave, Steele, Turbiville, Noem, Faehn

MOTION: AMEND TITLE OF HB 1192

1192tta

On page 1, line 1, of the printed bill, delete everything after "to" and insert "establish an ethanol blender pump incentive grant program, to make an appropriation therefor, and to declare an emergency."

On page 1, delete line 2.

Moved by: Rave  
Second by: Gosch  
Action: Prevailed by voice vote.

HB 1263: repeal certain provisions relating to the terms of wind easements and wind energy leases.

Proponents: Representative Kristi Noem  
Representative Val Rausch  
Senator Larry Rhoden  
Senator Russell Olson  
Representative Mitch Fargen  
Darla Pollman-Rogers, SD Rural Electric Association  
Matt McCaulley, Titan Wind (Handouts 4, 5, 6)  
Mark Williamson, Titan Wind

Neil Fulton, Governor's Office  
Bob Sahr, East River Electric  
John Kerstiens, SD Farmers Union  
Opponents: Brett Koenecke, Iberdrola Renewables and Invenergy  
Jim Hood, Missouri Energy Services

MOTION: AMEND HB 1263

1263te

On the printed bill, delete everything after the enacting clause and insert:

" Section 1. That § 43-13-16 be amended to read as follows:

43-13-16. For purposes of §§ 43-13-17 to ~~43-13-19~~ 43-13-20, inclusive, and sections 3 to 7, inclusive, of this Act, the term, wind easement, means a right, whether or not stated in the form of a restriction, option to obtain an easement, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of any owner of land or air space for the purpose of ensuring adequate exposure of a wind power system to the winds, or an agreement to refrain from developing a wind power system.

Section 2. That § 43-13-17 be amended to read as follows:

43-13-17. Any property owner may grant a wind easement in the same manner and with the same effect as a conveyance of an interest in real property. The easement shall be created in writing, and the easement or a memorandum thereof shall be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the easement is granted. Any such easement runs with the land or lands benefited and burdened and terminates upon the conditions stated in the easement, except that the term of any such easement may not exceed fifty years. Any such easement is void if no development of the potential to produce energy from wind power associated with the easement has occurred within five years after the effective date of the easement ~~began~~. Any payments associated with the granting or continuance of any such easement shall be made on an annual basis to the owner of record of the real property at the time the payment is made. If the easement holder mortgages or otherwise encumbers to any party any part of the easement holder's rights and interests under the easement, any such mortgage or encumbrance on the easement is the responsibility of the easement holder and attaches only to the easement holder's rights and does not otherwise attach to the land or obligate the property owner. Each wind easement agreement shall include a statement disclosing that the easement holder may mortgage or encumber any part of the easement holder's rights and interests under the agreement unless otherwise specified in the agreement.

Section 3. That chapter 43-13 be amended by adding thereto a NEW SECTION to read as

follows:

The five-year development period specified in §§ 43-13-17 and 43-13-19 shall be extended to a maximum development period of twelve years for any wind developer that files a sworn affidavit with the Public Utilities Commission. The affidavit is for informational purposes only and shall:

- (1) State the intention of the wind developer to pursue a proposed wind energy project of five hundred megawatts or greater in nameplate capacity and a transmission solution for the project involving an interstate electric transmission line with a design of 345 kV or greater; and
- (2) Describe the geographic area covered by the project.

The twelve-year period applies to any wind easement or wind lease for property within the geographic area described in the affidavit and held under a wind easement or wind lease by the developer filing the certification or its affiliate, member, or partner.

The twelve-year maximum development period commences on the earlier of the effective date of the wind easement or wind lease or the date the wind easement or wind lease was executed by all parties to the agreement.

Section 4. That chapter 43-13 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of §§ 43-13-17 to 43-13-20, inclusive, and sections 3 to 7, inclusive, of this Act, development of the potential to produce energy from wind power associated with the wind easement or wind lease occurs when the foundation is poured for the first wind turbine to be installed on any property that is part of any one wind energy project, on any property that is part of any single construction stage of a wind energy project, or on any property that is described in the notice required by § 49-41B-25.1.

Section 5. That chapter 43-13 be amended by adding thereto a NEW SECTION to read as follows:

In addition to any other requirements of law, the filing required pursuant to § 43-13-17 shall include the following information:

- (1) The names and addresses of the parties;
- (2) A legal description of the real property involved;
- (3) Description of property rights conveyed;
- (4) Term of the wind easement;
- (5) Description of any restrictions placed on the property for essential services as defined in § 43-13-20; and
- (6) In the case of a third party acquisition, the name and address of the party for which the wind easement is acquired.

This information shall be contained in a separately filed and recorded document. Nothing in this section prohibits the filing of additional documents between the parties.

Section 6. That chapter 43-13 be amended by adding thereto a NEW SECTION to read as follows:

No wind easement or wind lease may be executed by the parties until at least ten business days after the first proposed easement or lease has been delivered to the property owner.

Section 7. That chapter 43-13 be amended by adding thereto a NEW SECTION to read as follows:

No wind easement or lease may require either party to maintain the confidentiality of any negotiations or terms of any proposed easement or lease except that the parties may agree to a mutual confidentiality agreement in the final executed wind easement, wind lease, or a separate document. Any disclosure of trade secrets or competitive business plans of the developer may be subject to the confidentiality agreement whether occurring before or after execution of the wind easement or wind lease."

Moved by: Rave  
Second by: Gosch  
Action: Prevailed by voice vote.

MOTION: AMEND HB 1263

1263oa

On the previously adopted amendment (1263te), in Section 7, delete "No wind easement or lease may require either party" and insert "No wind developer may require a property owner".

Moved by: Hunhoff (Bernie)  
Second by: Feinstein  
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1263 AS AMENDED

Moved by: Rave  
Second by: Gosch  
Action: Prevailed by roll call vote. (13-0-0-0)

Voting Yes: Boomgarden, Engels, Feinstein, Gosch, Hunhoff (Bernie), Lucas, Lust, Rausch, Rave, Steele, Turbiville, Noem, Faehn

MOTION: AMEND TITLE OF HB 1263

1263ttc

On page 1, line 1, of the printed bill, delete "repeal" and insert "revise".

Moved by: Rave  
Second by: Noem  
Action: Prevailed by voice vote.

HB 1268: establish certain requirements and safeguards relating to wind easements and wind energy leases.

Presented by: Representative Mitch Fargen

MOTION: TO TABLE HB 1268

Moved by: Rave  
Second by: Feinstein  
Action: Prevailed by roll call vote. (12-0-1-0)

Voting Yes: Boomgarden, Engels, Feinstein, Gosch, Hunhoff (Bernie), Lucas, Lust, Rausch, Rave, Steele, Turbiville, Faehn

Excused: Noem

HB 1194: revise certain provisions concerning wind easements and to specify certain information to be included in the recorded documents.

Presented by: Representative Val Rausch

MOTION: TO TABLE HB 1194

Moved by: Rave  
Second by: Steele  
Action: Prevailed by roll call vote. (12-0-1-0)

Voting Yes: Boomgarden, Engels, Feinstein, Gosch, Hunhoff (Bernie), Lucas, Lust, Rausch, Rave, Steele, Turbiville, Faehn

Excused: Noem



MOTION:     ADJOURN

Moved by:     Rave

Second by:    Steele

Action:        Prevailed by voice vote.

Grace Curtis  
Committee Secretary

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Bob Faehn, Chair